

**ORDINANCE NO. 20071018-002**

**AN ORDINANCE CREATING AN ECONOMIC DEVELOPMENT PROGRAM  
AND AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT WITH  
HELIOVOLT CORPORATION.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The city council finds that:

- (A) HelioVolt Corporation ("HelioVolt"), a corporation engaged in high technology solar power research and production, is considering the location of a new research and manufacturing facility in Austin, Texas.
- (B) HelioVolt has represented to the City that if the manufacturing facility is constructed, it will add at least 168 new permanent jobs in Austin within five (5) years.
- (C) HelioVolt will purchase new equipment, and has requested economic development grants calculated based on the property tax which will be owed on its real and business personal property related to the manufacturing facility. The City proposes to provide annual economic development grants to HelioVolt equivalent to 60 percent of the City property tax paid, for a period of ten years, on the increase in value of HelioVolt's real and business personal property.
- (D) HelioVolt will invest a minimum of \$72.4 million in new machinery and equipment, and \$8 million in real property improvements for the facility, to be located in the desired development zone.
- (E) The City anticipates that HelioVolt will provide many benefits to the City and its citizens and businesses, and the City welcomes HelioVolt's presence in the City. The HelioVolt facility and related jobs will (1) provide additional economic benefits to the City, (2) be a catalyst for economic development benefiting the entire community, (3) promote local economic development, and (4) stimulate business and commercial activity in the City.
- (F) Texas Local Government Code Chapter 380 (*Miscellaneous Provisions Relating to Municipal Planning and Development*) authorizes the City to establish local economic development programs.

**PART 2.** An economic development program for HelioVolt is created under Texas Local Government Code Chapter 380 (*Miscellaneous Provisions Relating to Municipal Planning and Development*).

**PART 3.** As part of the City's economic development program, the city manager is directed and authorized to negotiate and execute a performance based economic development agreement with HelioVolt that includes terms and conditions substantially similar to those in the attached Exhibit 1, including economic development grants based on a portion of taxes paid, and other terms and conditions deemed necessary, advisable or required by the city manager or city attorney.

**PART 4.** This ordinance takes effect on October 29, 2007.

**PASSED AND APPROVED**

October 18, 2007

§  
§  
§ Betty Dunkerley for  
Will Wynn  
Mayor

**APPROVED:**

David Allan Smith  
David Allan Smith  
City Attorney

**ATTEST:**

Shirley A. Gentry  
Shirley A. Gentry  
City Clerk

## EXHIBIT 1

### CITY OF AUSTIN / HELIOVOLT CORPORATION

#### CHAPTER 380

#### ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement ("Agreement") is made and entered into by and between HELIOVOLT CORPORATION, a Delaware corporation qualified to do business in Texas, its successors and assigns ("HELIOVOLT CORPORATION") and the CITY OF AUSTIN, TEXAS, a home rule city and municipal corporation ("City").

#### RECITALS

WHEREAS, the City has adopted Ordinance No. \_\_\_\_\_, establishing and authorizing the City Manager to make economic development grants to HELIOVOLT CORPORATION as an inducement by the City for (i) HELIOVOLT CORPORATION to locate and maintain at least one Corporate Headquarters and Manufacturing Center in Austin, Texas, and (ii) HELIOVOLT CORPORATION to create new jobs and make more capital investment in the Desired Development Zone in Austin, Texas, [(i) and (ii) being the "Project"]; and

WHEREAS, as part of the Project, the City seeks to induce HELIOVOLT CORPORATION to create at least 168 new fulltime jobs in connection with the Project and the operations of HELIOVOLT CORPORATION in Austin, Texas, which jobs will promote state and local economic development and stimulate business and commercial activity in Austin; and

WHEREAS, as part of the Project, the City seeks to induce HELIOVOLT CORPORATION to invest at least \$80 million by December 31, 2017, in real property improvements, and new equipment and machinery, at its site or sites in the City's Desired Development Zone; and

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, the City and HELIOVOLT CORPORATION agree as follows:

## I. Authority

1.01 City Authority. The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and Ordinance No. \_\_\_\_\_ and constitutes a valid and binding obligation of the City.

1.02 HELIOVOLT CORPORATION'S execution and performance of this Agreement constitutes a valid and binding obligation of HELIOVOLT CORPORATION in the event HELIOVOLT CORPORATION proceeds to locate the Project at its site in the City's Desired Development Zone. The City acknowledges that HELIOVOLT CORPORATION is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to invest its funds, and expand employment in Austin.

## II. Definitions

2.01 "HELIOVOLT CORPORATION": The lands owned or leased by HELIOVOLT CORPORATION at \_\_\_\_\_, as shown on the Official Public Records of Travis County, Texas, and on which lands are located three buildings designated and known by HELIOVOLT CORPORATION as \_\_\_\_\_.

2.02 "Corporate Headquarters and Manufacturing Center": A building or buildings containing computing and communications networking equipment, thin film solar manufacturing equipment, and related electrical and mechanical equipment, at one of the approximate locations delineated as alternatives in the attached Exhibit A.

2.03 "Chapter 380 Payment": The amounts paid by the City to HELIOVOLT CORPORATION under the Program (defined below).

2.04 "Effective Date" is November , 1, 2007,

2.05 "Full-time Job(s)" means full-time jobs performed at the HELIOVOLT CORPORATION by employees of HELIOVOLT CORPORATION and created as the result of the construction, renovation or restoration, and the operation by

HELIOVOLT CORPORATION of a Corporate Headquarters and Solar Film Manufacturing Facility.

2.06 "New Equipment and Machinery" means new equipment and machinery placed into service for, or supporting the operation of a Corporate Headquarters and Manufacturing Center (s) at, the HELIOVOLT CORPORATION Campus after the Effective Date, or equipment supporting or used in conducting research and development or manufacturing operations at the HELIOVOLT CORPORATION Campus.

2.07 "Program" means the economic development program for this Project established by the City pursuant to Texas Local Government Code Chapter 380 and under the Ordinance to promote local economic development and stimulate business and commercial activity within the City.

2.08 "TCAD" means the Travis Central Appraisal District.

2.09 "Undocumented worker" means an individual who, at the time of employment, is not:

- (A) lawfully admitted for permanent residence to the United States; or
- (B) authorized under law to be employed in that manner in the United States.

### III. Helio Volt Corporation Obligations

In consideration of the City's participation in the Program, HELIOVOLT CORPORATION agrees that the following performance guidelines shall apply:

3.01 Creation of Jobs. Between the effective date of this Agreement and \_\_\_\_\_ HELIOVOLT CORPORATION will create at least 168 new Full-time Jobs.

(a) In the event of a voluntary or involuntary termination or elimination of a Full-time Job after \_\_\_\_\_, that causes the number of people employed in Full-time Jobs to fall below 168, HELIOVOLT CORPORATION shall continue to receive the incentives set out in Section 4.01 below, provided the required number of people employed in said Full-time Jobs is re-established within one hundred twenty (120) days after the

date of the termination or elimination that caused the number of people employed in Full-time Jobs to fall below 168.

(b) In the event of a voluntary or involuntary termination or elimination of a Full-time Job after \_ , that causes the number people employed in Full-time Jobs to fall below 168, and that are not reestablished within one hundred twenty (120) days in accordance with paragraph (a) above, then, at the option of the City, this Agreement may be terminated.

(c) HELIOVOLT CORPORATION shall utilize non-profit organizations in hiring recruitment efforts for the Corporate Headquarters and Manufacturing Center, and work with local non-profit organizations to further expand its pool of diverse candidates. Accordingly, HELIOVOLT CORPORATION will utilize such organizations as the National Society of Black Engineers, Society of Hispanic Professional Engineers, the Career Expo for People with Disabilities, the Out and Equal Summit, and other appropriate organizations to expand its pool of diverse candidates.

(d) In accordance with Chapter 2264 of the Texas Government Code, Heliovolt agrees not to employ Undocumented Workers. During the term of this Agreement, Heliovolt shall notify City of any complaint brought against HelioVolt alleging that HelioVolt has employed Undocumented Workers. HelioVolt or a branch division or department of Heliovolt s convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay to the City the total amount of economic development grants it has received, together with interest at the rate of 5% from the date of the first payment of an economic development grant , not later than the 120th day after the date the City notifies Heliovolt of the violation. The City shall recover court costs and reasonable attorney's fees incurred in an action brought to recover past economic development grants and interest. HelioVolt is not liable for a violation of this chapter by a subsidiary, affiliate, or franchisee, or by a person with whom HelioVolt contracts.

### 3.02 Local Business Participation.

(a) HELIOVOLT CORPORATION shall provide small businesses, minority, women and veteran-owned businesses, and other under-utilized businesses an equal opportunity to participate as suppliers for materials and services purchased by HELIOVOLT CORPORATION. HELIOVOLT CORPORATION shall:

(i) Identify, qualify, mentor and develop local small businesses by purchasing from these businesses whenever practical while continuing to procure on the basis of competitive technology, quality, responsiveness, delivery and cost;

(ii) Expand the number of local small businesses and minority, women, and veteran-owned businesses used by HELIOVOLT CORPORATION and to increase the total amount of procurements awarded to these businesses; and

(iii) Adhere to HELIOVOLT CORPORATION supplier diversity policies, practices and procedures and comply with all applicable Federal and Defense Federal Acquisition Regulations, including Public Laws 95-507, 99-661, 100-180, 100-656 and all applicable state and municipal laws and ordinances.

(b) In the construction of the facilities which are the subject of the Economic Development Agreement, HELIOVOLT CORPORATION and its general construction contractor will work to identify qualified minority and women-owned businesses (MWBE) through local and regional agencies and appropriate outreach efforts, i.e., recruiting fairs; outline the potential scopes of work; establish the bid packages available; match the qualified MWBE businesses with the specific bid packages; and, solicit those qualified MWBE businesses to participate in the process.

(c) In an effort to further stimulate and positively impact the local economy, HELIOVOLT CORPORATION will use its reasonable best efforts to source, pre-qualify and include small, minority, women, veteran and other under-utilized businesses in the HELIOVOLT CORPORATION supply chain. This effort is applicable to all procurement and supplier selection decisions and to all functional areas of HELIOVOLT CORPORATION including, but not limited to, manufacturing, engineering, marketing, sales, service, facilities, finance and administration.

3.03 Corporate Headquarters and Manufacturing Center. By \_\_\_\_\_, HELIOVOLT CORPORATION will invest at least \$80,400,000 in the purchase or leasing of vacant facilities, renovation and environmental clean up of the existing facilities, construction of new real property improvements, and installation of New Equipment and Machinery for a **Corporate Headquarters and Manufacturing Center** at an existing facility located within the City of Austin.

3.04 Compliance with City Regulations. For the construction or remodeling of the Corporate Headquarters and Manufacturing Center and related facilities which are the subject of the Economic Development Agreement, and any future facilities in the City's planning jurisdiction during the term of the Economic Development Agreement, HELIOVOLT CORPORATION will comply with all City Code regulations, including water quality regulations in effect at the time any site plan application is filed, unless HELIOVOLT CORPORATION has negotiated an agreement with the City to comply with overall impervious cover limits and provide the currently required water quality controls. This means HELIOVOLT CORPORATION will not assert possible Chapter 245 rights to avoid compliance with water quality regulations for any future development within Austin's planning jurisdiction during the term of this agreement. If during the term of the Economic Development Agreement, HELIOVOLT CORPORATION's development does not comply with water quality regulations in effect at the time any site plan application is filed for any development, after proper notice and reasonable opportunity to cure the deficiency, this Economic Development Agreement shall, at the option of the City, terminate by giving HELIOVOLT CORPORATION written notice of its election.

3.05 Certificate of Compliance and Inspection.

(a) HELIOVOLT CORPORATION shall annually deliver to the City a Certificate of Compliance, at the time that HELIOVOLT CORPORATION delivers to City the annual Property Tax Notice required under Section 4.02 below.

(b) In the Certificate of Compliance, HELIOVOLT CORPORATION shall warrant to the City that it is in full compliance with each of its obligations under this Agreement, including the number of new Full-time Jobs maintained by HELIOVOLT CORPORATION for the preceding year pursuant to Section 3.01 above.

(c) City has the right to inspect only such pertinent records of HELIOVOLT CORPORATION as are reasonably necessary to verify compliance with all requirements of this Agreement. Inspections shall be preceded by at least two week's notice in writing to HELIOVOLT CORPORATION .



3.06 Failure to Meet Obligations. In the event that HELIOVOLT CORPORATION fails to fulfill its obligations under the performance guidelines above, after receipt of notice and expiration of the cure period described in Section 5.05 of this Agreement, the City may, at its option, terminate this Agreement, whereupon the City shall not be required to pay, and HELIOVOLT CORPORATION shall not be entitled to receive any further payments under this Agreement; provided, that the foregoing shall not be deemed or construed to release the City from its obligation to make payment for any prior year during which HELIOVOLT CORPORATION did fulfill its obligations under the performance guidelines above.

#### IV. City Obligations

4.01 Property Tax Incentive. As consideration for HELIOVOLT CORPORATION performance of its obligations under this Agreement, for a period of 10 years beginning January 1, \_\_\_\_\_ and ending December 31, \_\_\_\_\_, the City will:

(a) rebate 60% of the City property taxes levied on all personal property acquired after the Effective Date of this Agreement that is installed in a Corporate Headquarters and Manufacturing Center located on a HELIOVOLT CORPORATION Campus(es) in support of a Corporate Headquarters and Manufacturing Center, and

(b) rebate 60% of the City property taxes levied on the increase after the Effective Date of this Agreement in taxable value of the HELIOVOLT CORPORATION Campus(es) and improvements thereon which are owned or leased by HELIOVOLT CORPORATION. Exhibit A includes plat(s) of the HELIOVOLT CORPORATION Campus(es) that indicates the approximate locations at which Corporate Headquarters and Manufacturing Center(s) could be constructed, and dimensions of the structure(s).

4.01.1 Replacements of existing property must be New Equipment and Machinery in order to be eligible for rebate of 60% of City property tax under this Agreement. Real property improvements constructed by or for HELIOVOLT CORPORATION after the Effective Date are included among the property referenced in Section 4.01(b); and City property taxes on the increase in the value of land, above the value as of January 1<sup>st</sup> of the year in which said land is purchased, if purchased by HELIOVOLT CORPORATION for the Corporate Headquarters and Manufacturing Center facilities, is also

included among the amount eligible for rebate under Section 4.01(b). City property taxes on the value, determined on January 1<sup>st</sup> of the year in which acquired) of existing real property improvements acquired or leased by HELIOVOLT CORPORATION after the Effective Date are not included in among the amount eligible for rebate under Section 4.01(b).

#### 4.02 Schedule for Chapter 380 Payments and Coordination with TCAD.

(a) In order to properly identify property which is eligible for rebate of city taxes, HELIOVOLT CORPORATION will work with TCAD to create separate TCAD accounts for both new real property improvements, and personal property acquired after the Effective Date.

(b) With respect to the tax rebates described in section 4.01 above, on or before March 1<sup>st</sup> of each year during the term of this Agreement, HELIOVOLT CORPORATION shall notify the City in writing of the amount of City property taxes paid by HELIOVOLT CORPORATION to the County tax collector or its successor (the "Property Tax Notice"). The Chapter 380 Payments with respect to the property taxes shall be based on the amount stated in the Property Tax Notice.

(c) Both real property and personal property Chapter 380 Payments shall be paid to HELIOVOLT CORPORATION, by the City on an annual basis for the preceding year, on or before October 30<sup>th</sup> following the tax year for which they were paid. For example, the first Chapter 380 Payments shall be based on taxes paid for the calendar year 2008, and shall be paid on or before October 30, 2009, and the last Chapter 380 Payments for the first ten year period of tax rebates shall be based on taxes paid for the calendar year \_\_\_\_\_, and shall be paid on or before October 30, \_\_\_\_.

(d) If, after the October 30 payment date of any year, HELIOVOLT CORPORATION is required to pay more City property taxes on its properties with respect to which a rebate thereof is provided under this Agreement than the amount stated in HELIOVOLT CORPORATION'S Property Tax Notice to the City for the year preceding the applicable October 30 payment date, then HELIOVOLT CORPORATION shall notify the City in writing of the amount of additional Property Tax paid by HELIOVOLT CORPORATION to the County tax collector or its successor (the "Additional Property Tax Notice"). The City shall pay HELIOVOLT CORPORATION the amount stated in the Additional Property Tax Notice

at the same time as the next payment is due to HELIOVOLT CORPORATION under this Section. A summary explanation and examples of schedules for rebates of taxes and fees under this Agreement is attached as Exhibit B.

## V. General Terms

5.01 Term. This Agreement shall become enforceable upon execution and delivery by the City and HELIOVOLT CORPORATION and shall be effective on the Effective Date. Unless terminated earlier in accordance with its terms, this Agreement shall terminate December 31, \_\_\_\_\_.

5.02 Payments Subject to Future Appropriation. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to HELIOVOLT CORPORATION.

(a) All payments or expenditures made by the City, including Austin Energy, under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

(b) The payments to be made to HELIOVOLT CORPORATION, or other expenditures under the Agreement, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.

(c) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to HELIOVOLT CORPORATION for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that HELIOVOLT CORPORATION, in its sole discretion, shall have the right but not the obligation to terminate this Economic Development Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.

(d) To the extent there is a conflict between this Section and any other language or covenant in this Agreement, this Section shall control, except as set out in Subsection 5.02(e) below.

(e) Notwithstanding any other clause or covenant in this Agreement to the contrary, this Agreement shall not be subject to this Section 5.02, if Texas Constitutional Article III, Section 52-a, as amended as a result of the November 2, 2005 general election, permits the removal of this Section 5.02 without rendering this Agreement, or a portion hereof, void, voidable, or invalid. In such event, this Section 5.02 shall not govern this Agreement or portion hereof; and this Agreement, or such portion, shall be interpreted and enforced as if this Section 5.02 were not contained in this Agreement.

5.03 Mutual Assistance. City and HELIOVOLT CORPORATION will do the things commercially reasonable, necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of changes in public policy, the law or taxes or assessments attributable to HELIOVOLT CORPORATION facilities.

5.04 Representations and Warranties. The City represents and warrants to HELIOVOLT CORPORATION that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. HELIOVOLT CORPORATION represents and warrants to City that it has the requisite authority to enter into this Agreement.

5.05 Default. If either the City or HELIOVOLT CORPORATION should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of ninety (90) days after the receipt of said notice to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.

5.06 Attorney's Fees. In the event any legal action or proceeding is commenced between the City and HELIOVOLT CORPORATION to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, unless prohibited by law.

5.07 Entire Agreement. This Agreement contains the entire agreement between the parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement. This Agreement may only be amended, altered or revoked by written instrument signed by the City and HELIOVOLT CORPORATION .

5.08 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

5.09 Assignment. Except as provided, HELIOVOLT CORPORATION may not assign all or part of its rights and obligations to a third party without prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary, HELIOVOLT CORPORATION may assign all or part of its rights and obligations without the prior consent of the City to an affiliate of HELIOVOLT CORPORATION and to a third party lender advancing funds for the acquisition, construction or operation of HELIOVOLT CORPORATION facilities.

5.10 Termination. In the event HELIOVOLT CORPORATION elects not to proceed with the Project as contemplated by this Agreement, HELIOVOLT CORPORATION shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.

5.11 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

HELIOVOLT CORPORATION :

\_\_\_\_\_  
\_\_\_\_\_

Attn \_\_\_\_\_

Fax:

Re: Economic Development Agreement

with copies to:

HelioVolt Corporation

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**City:**

City Manager  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
(P.O. Box 1088, Austin, Texas 78767)  
Phone: (512) 974-2200

with copies to:

Director, Economic Growth and Redevelopment Services  
Economic Development Manager, Economic Growth and  
Redevelopment Services  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78704  
Phone: (512) 974-7820

City Attorney  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
(P.O. Box 1546, Austin, Texas 78767)  
Phone: (512) 974-2268  
Facsimile: (512) 974-2894

Either party may designate a different address at any time upon written notice to the other party.

5.12 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

5.13 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Travis County, Texas.

5.14 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.15 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

5.16 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

5.17 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with HELIOVOLT CORPORATION facilities or the design, construction or operation of any portion of the facilities.

5.18 Exhibits. The following Exhibits "A", "B" and "C" are attached and incorporated by reference for all purposes.

Exhibit "A": Plat and Drawing with outline of Corporate Headquarters and Manufacturing Center

Exhibit "B": Summary of Schedules and Examples for Rebates of Taxes and Fees

Exhibit "C": Compliance Form

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

EXECUTED by the authorized representatives of the parties on the dates indicated below.

HELIOVOLT CORPORATION

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF AUSTIN, TEXAS,  
a home-rule city and municipal  
corporation

By: \_\_\_\_\_  
Toby Hammett Futrell  
City Manager  
Date: \_\_\_\_\_

DRAFT



Exhibit A

HELIOVOLT CORPORATION plat/drawing of Corporate Headquarters and  
Manufacturing Center site

DRAFT

## EXHIBIT B

### Incentive Program Methodology

1. HELIOVOLT CORPORATION makes investment each year
2. TCAD appraises value of investment each year and records in separate TCAD account
3. HELIOVOLT CORPORATION pays property taxes each year on new investment
4. City budgets each year for incentive payment based on taxes paid for previous year
5. City makes economic development grant each year to HELIOVOLT CORPORATION based on taxes paid for previous year.

### Example Property Tax Grant

December, 2007 HELIOVOLT CORPORATION invest in building, machinery and equipment

January 1, 2008 TCAD appraises HELIOVOLT CORPORATION fixed assets

December, 2008 HELIOVOLT CORPORATION pays property tax

March 1, 2009 HELIOVOLT CORPORATION informs COA via letter of taxes paid on new investment

June, 2009 COA prepares budget

October 30, 2009 COA pays economic development grant to HELIOVOLT CORPORATION

## EXHIBIT C

### Economic Development Agreement Reporting Form City of Austin

REPORTING YEAR \_\_\_\_\_ (YEAR \_\_\_\_\_ OUT OF 10)

#### 1.0 Employment

- 1.1 Total number of employees at facility for reporting year. Agreement requires 168 new jobs by December 31, \_\_\_\_ (Section 3.01) \_\_\_\_\_ Number of FTE's for reporting year \_\_\_\_\_
- 1.2 Average Annual Salary \_\_\_\_\_ Avg. annual salary for reporting year \$ \_\_\_\_\_
- 1.3 Total Payroll \_\_\_\_\_ Annual payroll for reporting year \$ \_\_\_\_\_
- 1.4 Diverse Workforce (Section 3.01c)  
Please attach information addressing this section including: 1) Enhancement of recruiting efforts for minority job applicants; 2) Recruiting fairs; for new hires in underrepresented areas of the city; and 3) Texas Workforce Commission assistance in recruiting job seekers.
- 1.5 Diverse Contractor Workforce (Section 3.02)  
Please attach information addressing this section including: 1) Efforts with general construction contractor and major subcontractors in holding recruiting fairs regarding jobs opportunities.
- 1.6 Diverse Construction Vending Opportunities (Section 3.02)  
Please attach information addressing this section including: 1) Efforts to acquire goods and services from M/WBE's during construction phase of the 300mm fab.
- 1.7 Small Business Utilization (Section 3.02)  
Please attach information addressing this section including: 1) Efforts to utilize locally based small businesses in supporting functions of the new 300mm fab.

#### 2.0 Investment

Agreement requires \$80,000,000 by December 31, \_\_\_\_\_ in the purchase or lease of existing facilities, renovation & environmental cleanup of the existing facilities (Section 3.03)

- |     |                                       |               |                            |
|-----|---------------------------------------|---------------|----------------------------|
| 2.1 | Total investment since project start. | Real Property | Business Personal Property |
|     |                                       | \$ _____      | \$ _____                   |
| 2.2 | Reporting year investment             | \$ _____      | \$ _____                   |

**3.0 Reimbursement Request**

Agreement requires reimbursement for 60% of City tax paid on increase in appraised value above January 1, \_\_\_\_\_ appraised value and 60% of City tax on all business personal property acquired after the Effective Date of this Agreement that is installed in a Corporate Headquarters and Manufacturing Center located on a HELIOVOLT CORPORATION Campus(es) in support of a Corporate Headquarters and Manufacturing Center and real property over the term of Agreement (Section 4.01)

3.1 Property Taxes Paid (reporting year) \$ \_\_\_\_\_ \$ \_\_\_\_\_

3.2 Reimbursement Request \$ \_\_\_\_\_ \$ \_\_\_\_\_

3.3 Total Request \$ \_\_\_\_\_

I, the authorized HELIOVOLT CORPORATION representative, hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title (Chief Financial Officer or equivalent) \_\_\_\_\_